

## ESTABLISHMENT OF MILITARY JUSTICE—PROPOSED AMENDMENT OF THE ARTICLES OF WAR.

TUESDAY, OCTOBER 28, 1919.

UNITED STATES SENATE,  
SUBCOMMITTEE ON MILITARY AFFAIRS,  
*Washington, D. C.*

The subcommittee met, pursuant to adjournment, in the room of the Committee on Appropriations at 10.30 o'clock a. m., Senator Francis E. Warren presiding.

Present: Senators Warren (chairman) and Lenroot.

### STATEMENT OF MAJ. GEN. ENOCH H. CROWDER—Resumed.

Gen. CROWDER. Gentlemen, I thought I had discovered at our last session a desire, and, of course, a commendable one, to finish at the earliest date possible.

Senator WARREN. We certainly do not want to cut you off at all.

Gen. CROWDER. I can abridge what I have to say by introducing certain memoranda that I have prepared—personal accusations and my replies thereto—and would unhesitatingly follow that course but for the fact that it might be said by some that in following such a method I was avoiding cross-examination on my testimony. If I could be relieved of that inference, I would go ahead and greatly abridge the hearings by submitting these memoranda without reading them.

Senator LENROOT. I think that course will be entirely satisfactory to the committee; and, of course, if we desire to cross-examine you upon any points, we can do that later.

Gen. CROWDER. That will, of course, help out quite a good deal.

In the discussion of the November briefs at the last hearing, a reference was made to the Texas case, and at least one inquiry was made respecting the rank of the soldiers tried and the administrative course pursued with respect to them subsequent to the trial. Were they honorably restored to duty to serve out their original enlistment periods or were they permitted to reenlist? Did they lose their continuous-service status and their continuous-service pay?

### TEXAS MUTINY CASES.

In speaking of these cases, Gen. Ansell says (p. 118):

Now [the Secretary], upon the advice of the Judge Advocate General. \* \* \* says to these unjustly convicted men: "I will do convenient justice; I will permit you to reenlist" \* \* \* the Secretary said: "I will permit you to reenlist under

a statute which says that when a man has been properly convicted and the Secretary of War believes that he has actually expiated his offense and has shown that he is a good man, the Secretary may then waive the inhibitions placed upon his reenlistment by the act of 1894, to the effect that no man who has been dishonorably discharged from the Army can be reenlisted therein. \* \* \* Thus, these men are graciously permitted their reenlistment as a privilege in an Army from which they have been illegally expelled and in which they can start to work up again. They lose, besides, their right to continuous service and continuous-service pay." (P. 118.)

This statement is erroneous in the following regard: The men were not reenlisted, but were honorably restored under the act of March 4, 1915, which abolished military prisons and substituted in their stead the United States Disciplinary Barracks. That law permitted either reenlistment or honorable restoration—this honorable restoration to be effective to revive the original enlistment contract for a period equal to the period not served. Upon the completion of the full period, which would be the original period, a man with a good record after restoration would be entitled to an honorable discharge from that enlistment. The actual orders issued in the case of these men were the following:

JANUARY 2, 1918.

From: The Adjutant General of the Army.

To: The Commandant United States Disciplinary Barracks, Fort Leavenworth, Kans

Subject: Restoration to duty.

In the case of each of the following-named general prisoners, the unexecuted portion of the sentence published in G. C. M. O. No. 1174, Southern Department, October 16, 1917, is remitted; he is honorably restored to duty under the enlistment entered into by him on the date set after his name; is transferred as private to the Field Artillery, unassigned, and is detailed to duty at the United States Disciplinary Barracks for a period not to exceed three months:

Rupert P. Orndorff, formerly private, Battery A, Eighteenth Field Artillery; enlistment of December 22, 1913.

Roger Graves, formerly private, Battery A, Eighteenth Field Artillery; enlistment of December 12, 1916.

Andrew J. Brown, formerly private, Battery A, Eighteenth Field Artillery; enlistment of November 23, 1914.

John Van De Vooren, jr., formerly private, Battery A, Eighteenth Field Artillery; enlistment of February 7, 1916.

Frank J. Adamik, formerly private, Battery A, Eighteenth Field Artillery; enlistment of February 10, 1916.

John J. Puryanda, formerly private, Battery A, Eighteenth Field Artillery; enlistment of July 20, 1915.

Wilfred R. Knight, formerly private, Battery A, Eighteenth Field Artillery; enlistment of January 14, 1916.

Clarence Maheu, formerly private, Battery A, Eighteenth Field Artillery; enlistment of September 19, 1913.

Calvin E. Kunselman, formerly private, Battery A, Eighteenth Field Artillery; enlistment of November 29, 1916.

Ralph K. Green, formerly private, Battery A, Eighteenth Field Artillery; enlistment of November 29, 1916.

By order of the Secretary of War.

J. A. BARRY,  
*Adjutant General.*

The statement is erroneous in another regard. Gen. Ansell states that these men lost their right to "continuous service" and to "continuous service pay." This matter has been taken up by Maj. Bennett, of the Judge Advocate General's office, under my direction, and with the Auditor of the War Department and the Finance Officer of the War Department, with the result stated in the following memorandum:

OCTOBER 3, 1919.

Military justice.

Bennett, C. A., SW.

Memorandum for Gen. Crowder:

Subject: Continuous service pay—Texas mutiny case.

1. In accordance with your direction, I have made an investigation as to the accuracy of the statement of Gen. Ansell before the Senate Military Committee to the effect that the 10 men sentenced to dishonorable discharge in the Texas mutiny case forfeited their rights, as a result of having been dishonorably discharged from the service, to continuous service pay.

2. These men were not deprived of their right to continuous service pay by reason of their dishonorable discharge from the service and subsequent restoration. The holdings of the finance officer of the War Department, and the Controller of the Treasury in cases where the facts are identical with the facts in the cases in question, are to the effect that the act of restoration places the man back in his old enlistment, and that upon expiration of that enlistment period the man may, within the time specified in the continuous-service-pay act, reenlist and be entitled to and receive the increased pay authorized for another enlistment period.

3. No question, so far as the records of the finance office and the office of the Auditor of the War Department show, has been raised as to the right to continuous service pay of any of the 10 men dishonorably discharged and later restored to duty. I was advised by the finance office and the auditor's office that should this question later be raised, under the present facts they would hold these men entitled to continuous service pay.

C. A. BENNETT,  
*Major, Judge Advocate.*

Gen. Ansell, on pages 117–118, says:

Now, let us see what situation it left those men in, men of from 3 to 20 years' service: noncommissioned officers.

\* \* \* These men were branded as mutineers by the judgment of a court, irrevocable. Their service terminated that moment, their enlistment was cut short; the continuity of their service was interrupted; their continuous-service pay had been taken away from them. (Page 118.)

The records of the office of The Adjutant General show that all of these men were serving in their first enlistment except one, Sergt. John J. Poryanda, who was serving in his second enlistment, upon which he entered July 20, 1915; trial occurred September 17, 1917.

Gen. Ansell's statement, therefore, as to the length of service of these men, is erroneous.

In further discussing the November briefs, I referred to the fact that two of the 17 officers concurring with Gen. Ansell upon his brief holding that appellate power was vested in the Judge Advocate General by the terms of section 1199 of the Revised Statutes, had subsequently before this committee withdrawn that concurrence and expressed their nonconcurrence in the conclusion. These two officers were Lieut. Col. Alfred E. Clark, a lawyer from Portland, Oregon, commissioned in the Judge Advocate General's department and serving in the department throughout the war in the grades of major and lieutenant colonel; and Col. E. G. Davis, a lawyer from Idaho, a graduate of West Point, but who, for many years, has been practicing law in the State of Idaho, at Boise. I promised to refer to the record where they had withdrawn that concurrence, and I now hand that to the stenographer to put in.

Being urged by Senator Chamberlain to shorten his testimony as much as possible on this particular point, Lieut. Col. Alfred E. Clark replied:

Very good, I can conclude this then by simply saying that I did not finally agree with Gen. Ansell. (P. 173, hearing before the Senate Military Affairs Committee on S. 5320, Feb. 26, 1919; see also, pp. 172 and 174.)

The second officer, Col. E. G. Davis, testifying on the same day (see pp. 203 and 204 of the same hearing), said:

We (Col. Clark and himself) reached the conclusion that the better legal opinion was against the position which Gen. Ansell has assumed. (P. 204.)

I add these in order that my testimony may be complete by reference to the published hearings of the Senate Military Affairs Committee.

The reasons given by these officers are the foundation of my further statement that if all those gentlemen who concurred with Gen. Ansell on that brief were called before the committee and asked if they at present adhered to the view that section 1199, properly construed, conferred appellate power upon the Judge Advocate General, all but two or three might likewise withdraw their concurrence previously expressed. I have no personal knowledge of their views. I can only anticipate that when they are told that there was concealment in the November brief of an express grant of appellate power in the bankruptcy statute invoked as a legislative precedent; that the legislative history of section 1199 was inaccurately discussed; that the views and practice of Judge Advocates General Holt and Dunn upon this subject were misstated; that the statement that no court in the United States had ever passed upon the question was erroneous; and that the statement that the Judge Advocate General of the British Army exercised this power was likewise erroneous; when they realized that all five propositions upon which Gen. Ansell's construction was predicated were either misstatements or misleading statements, they would have no course but to withdraw their concurrence.

Further, in discussing the November 7 briefs, I referred to the fact that in concluding my opinion of November 27 I had promised a further study of this question of appellate power, first to see if it could not be deduced out of the inherent power of the President as constitutional commander in chief. I also stated to the Secretary of War that if it could not be deduced in that way I would present a project of legislation which would confer this appellate power upon the President in express terms. I prepared that project of legislation conferring upon the President in express terms this appellate power, and submitted it to the Secretary of War in January, which he, in turn, submitted to the chairmen of the two military committees of Congress on January 19, 1918, with an elaborate presentation of the reasons why such legislation should be enacted. In respect of this project I have to answer the following charges made before this committee by Gen. Ansell:

I should like to say that I have never believed, and I have good reasons for not believing, that that bill was submitted to this body in good faith. That bill was drafted and submitted by the Judge Advocate General of the Army, through and with the approval of the Secretary of War. The question is, Did the Judge Advocate General of the Army and the Secretary of War at that time want any revisory power? And really, do they want any now? (P. 111.)

And further he said:

It is significant also that his (the Judge Advocate General's) interest was not such as to produce subsequent effort to secure the enactment of this legislation. (P. 219.)

Further criticizing the bill, Gen. Ansell says that if the Secretary of War and the Judge Advocate General had intended any real

revisory power, the bill itself is evidence to the contrary, and then adds that it gave the power—

(1) To set aside the finding of "not guilty," an acquittal, and to substitute for it a conviction; \* \* \*

(2) To substitute a finding of a large offense for one of minor or lesser included degree; and

(3) To strike down a smaller punishment and substitute for it a larger one. (P. 110.)

He adds:

I can hardly conceive that anybody would submit such a bill as that to the Congress of the United States expecting it to pass upon thorough investigation, because few men in touch with the people of the United States, representatives of the people of the United States, would ever give their approval to a proposition that is so un-American, so basically illegal, and unjust and unfair, as to permit any man to strike down the judgment of a court to the disadvantage of the accused, substituting harsher punishment, harsher penalties, than the court awarded. (P. 111.)

I am frank to say that if the project of the bill formulated by me and transmitted by the Secretary of War to Congress means what Gen. Ansell says it means or can be reasonably construed to mean what he says it means, then I have given strong evidence of incompetency to discharge the duties of the office of the Judge Advocate General. Let us take up seriatim the construction Gen. Ansell places upon this bill.

In order for you to appreciate the points I have to make, it would be helpful if you had the bill before you.

Senator LENROOT. Where is that printed in this record?

Gen. CROWDER. It is on page 108 of this record.

Senator LENROOT. Yes; I have it.

Gen. CROWDER. I will wait long enough in my comment for you to glance over that bill. The italicized portion there.

Senator LENROOT (after examining the bill). Very well.

Gen. CROWDER. Now, the bill vests in terms in the President the power to set aside any finding in whole or in part. The words of grant in this project are "disapprove, vacate, or set aside," and that is all the power that the bill confers upon the President in respect of the findings. Where, I ask, is the power given to substitute a conviction for an acquittal?

Gen. Ansell's next contention is that the bill gives the power "to substitute the finding of a large offense for one of minor or lesser included degree." Where, I ask, is this power conferred? As I have said, the bill in terms gives the President the power "to disapprove, vacate, or set aside any finding in whole or in part." Is there anything said here about the power to substitute a finding of guilty of a larger offense for a finding of a smaller or included offense? Can anyone contend that under the language of this bill the President may substitute for a finding of guilty of manslaughter a finding of guilty of murder? Again I say it is impossible to understand how any such contention could be made.

Senator WARREN. Your contention is that it was all in the other direction?

Gen. CROWDER. But this construction of Gen. Ansell passed unchallenged, and a reader of what he said might conclude that his remarks were convincing to the committee.

Now, I have got something more.

Senator LENROOT. I would just like to ask you this: Your theory is that an acquittal, even though this would be translated as giving him a right to set aside a finding of an acquittal, and the court having dissolved, even if that had been set aside, there was no further power in the reviewing authority?

Gen. CROWDER. If the court had adjudged an acquittal both the reviewing authority and the President were absolutely powerless. They can not control the court.

Senator LENROOT. No; I mean under this bill.

Gen. CROWDER. This bill; it did not change the situation.

Senator LENROOT. Of course, technically, this would give power to set aside a finding of acquittal.

Gen. CROWDER. Yes; but the power of disapproval of an acquittal has been exercised from time immemorial under the common law, military, until recently when we changed all that by an Executive order. But there never was power in any reviewing authority, even the President, to substitute a conviction for the disapproved verdict of acquittal.

Senator LENROOT. Yes; but heretofore the President himself had no power to set aside a verdict.

Gen. CROWDER. Of acquittal?

Senator LENROOT. Yes.

Gen. CROWDER. Yes; he had, when he was the reviewing or confirming authority.

Senator LENROOT. Under what?

Gen. CROWDER. Under the common law, military.

Senator LENROOT. I had supposed the theory was that he had not.

Gen. CROWDER. Perhaps a part of our difficulty is in the use of words. I can not distinguish between the legal effect of the two terms, "disapprove" and "set aside."

Senator LENROOT. I had understood that it was taken for granted that while the President might disapprove a finding, that did not set aside the verdict. In other words, it did not remove the stigma, the mere disapproval, unless the court followed it out by action.

Gen. CROWDER. Disapprove a finding of acquittal?

Senator LENROOT. Yes; any finding.

Gen. CROWDER. If he disapproves a finding that is the end of the case; there is an absolute wiping out of the consequences.

Senator LENROOT. Oh, the consequences!

Gen. CROWDER. You can not disturb the historical fact that a court has met and has reached a finding of guilty.

Senator LENROOT. Yes.

Gen. CROWDER. But the reviewing or confirming authority is a part of the court. If he withholds approval of the findings of the court they have no validity; and yet we have always held that it had this much validity, that there has, in such case (except where the disapproval was based on jurisdictional grounds) been double jeopardy or a previous trial.

Senator LENROOT. I understand that; but I think it is very important whether I have misunderstood the theory throughout here. I had understood that one of the reasons why it was agreed by both sides to the controversy that there should be this appellate power vested somewhere, was that under the law as it now stands, while the

President could relieve the defendant from the consequences of a verdict, he had no power to set aside that verdict. Now, am I wrong about that?

Gen. CROWDER. I do not think there is any difference between us; if we can understand the terms in which we are talking. When he disapproves a finding and a sentence, I can not myself distinguish the difference between that and the setting aside of the finding and sentence, because neither has any validity until it has the approval of the superior authority; and lacking validity it remains not a finding of guilty, not a sentence. It is just as necessary, Senator, that the reviewing authority approve in order to give the finding and sentence validity as it is that the court should have adjudged the finding and sentence.

Senator LENROOT. I may have gotten an entirely incorrect idea of what this involved. I had supposed that the defect in the law was that, while they had the power to disapprove, it only related to the execution of the judgment.

Gen. CROWDER. Oh, no.

Senator LENROOT. And that the very purpose, both of this bill and of the legislation—to that extent both sides are agreed—was to vest the power in some appellate body to set aside actually and remove the stigma of a verdict, in case it was wrongfully rendered.

Gen. CROWDER. I now see clearly what obstructs a complete understanding. There are two classes of cases to consider. First, those in which the President is the reviewing or the confirming authority; second, the large class of cases where a subordinate commander is the convening and reviewing authority and whose action by way of approval or disapproval is final. Taking the latter class of cases, suppose the subordinate commander disapproves a finding of guilty; what is there left of the case? Nothing. That man is in the condition of a man who has been acquitted. You need no remedy to reach his case.

Senator LENROOT. That is where the convening authority reviews?

Gen. CROWDER. Where the convening authority reviews.

Senator LENROOT. Yes.

Gen. CROWDER. The same thing is true in the class of cases which come from the court to the President as the convening or confirming authority. He withholds his approval, or he disapproves.

Senator LENROOT. The language is very different in the two cases.

Gen. CROWDER. I do not understand so.

Senator LENROOT. The language is very different in the two cases, is it not; of the power of the President and the power of the convening authority to review?

Gen. CROWDER. Not where they are both convening authorities.

Senator LENROOT. No; I understand; but where they appeal to the President?

Gen. CROWDER. Where the President is the confirming authority?

Senator LENROOT. Yes.

Gen. CROWDER. Then he passes upon both the findings of the court and the action of the convening authority below.

Now, in the cases where—and they are the great majority—the action of the reviewing authority below is final. The President had no power to wipe out the stigma of conviction, even though he was satisfied of the existence of prejudicial error that would invalidate

that case. If it was not jurisdictional error he was without power, and the purpose of all this legislation is to give this power, so that the man will always have a remedy.

Senator LENROOT. Now you and I agree; but I do not understand the distinction that you make, General. Pardon me. I did not suppose that the power of the President to disapprove in any case as a confirming authority carried with it under existing law the power to set aside the proceeding itself.

Gen. CROWDER. As convening or confirming authority?

Senator LENROOT. Not of the convening authority, but of the President of the United States.

Gen. CROWDER. I have used both in my discussion of this subject.

Senator LENROOT. Oh, yes.

Gen. CROWDER. The power of the convening authority to disapprove a case, once exercised, is a complete absolution of that man. It has the full effect of an acquittal.

Senator LENROOT. Yes; of course, of the convening authority. Now, take it of the President as confirming authority?

Gen. CROWDER. Let us suppose that the convening authority below has approved. His action under the present code and until the issuance of the General Order No. 7, was final, except for jurisdictional error. The President was without any power. The purpose of all this legislation is to vest in the President, in this class of cases, the power to do just what the reviewing authority by law could have done, namely, to disapprove the findings and sentence.

Senator LENROOT. Then that is where I misunderstood you. What did you mean, General, when you said, as I understood you, that when the President of the United States disapproved the findings it set aside the whole proceeding under the existing law?

Gen. CROWDER. I meant that there was a limited class of cases in which the President is either the convening or the confirming authority, and in which limited class of cases his disapproval of the findings operates as an acquittal; but in the larger class of cases—the great majority—he is neither the convening nor the confirming authority, and has no power of disapproval under the present law.

Senator LENROOT. Yes; I understand that.

Gen. CROWDER. The President convened the court for the trial of Gen. Swaim, I think. He probably convened the courts for the trials of Gen. Hazen and Gen. Fitz-John Porter, but I am not certain.

Senator LENROOT. There he was the convening authority?

Gen. CROWDER. Yes; but more frequently is the confirming authority.

Senator LENROOT. Yes.

Gen. CROWDER. And what class of cases does he confirm? Cases of death and dismissal which the reviewing authority below has not the authority to confirm. In that limited class of cases he is the confirming authority. Now, in respect of those he has this same power that the reviewing authority below has to wipe the whole thing out by disapproval, and I think if your mind will rest upon this proposition you will have the issue clearly before you. Those two classes of cases in which the President is either convening or confirming authority you can largely ignore in discussing the necessity for appellate power, and fix your attention upon those cases where the action of the reviewing authority below is final under the present law,

except as General Order No. 7 has operated to reserve jurisdiction. There is where the necessity for this appellate power exists. Now, I do not say that that project did not give the President more appellate power than he has as convening or confirming authority, but I do say that he has now that power of disapproval, in all cases where he is convening or confirming authority. He has not, of course, the power to substitute a finding of a lesser and an included offense, as we intended to give it in that proposed new legislation, but he did have this power of disapproval; and when the President wipes out a trial below in the two classes of cases he is competent to consider, namely, cases where he himself has ordered the trial, and cases where under the law he is the confirming authority, it is just as if there had been no trial.

I am very glad that this matter was brought up, because it is very important to understand the scope of this new legislation that is being sought, and what classes of cases it is going to reach.

Senator LENROOT. I think I understand you now.

Gen. CROWDER. But, still more important, Gen. Ansell declares that under the terms of the bill prepared by me for increased appellate powers in the President, it would be competent for the appellate authority to increase sentences adjudged by courts-martial. Heretofore I have been dealing with findings. Now I ask you to look again to see what power that bill gives to the President over a sentence, because I want to be understood in regard to this. The language employed in that bill as to sentences is "to modify, vacate or set aside" sentences. Clearly the power to increase sentences can not be found in that language unless it is contained in the word "modify." Before, in discussing the findings, we were dealing with the language, "to disapprove, vacate or set aside." Now we are dealing with language in part new, to "modify, vacate or set aside sentences." Clearly the power to increase sentences can not be found in the language unless it is contained in the word "modify." It needs but a moment's reflection to perceive that the word "modify" used in a penal statute is not susceptible of the meaning Gen. Ansell attributes to it.

The Century Dictionary gives the following as the primary definition of the verb "modify": "To qualify; especially, to moderate or reduce in extent or degree."

The Standard Dictionary gives its first meaning as "to make somewhat different;" and then adds the following: "To make more moderate or less sweeping; reduce in degree or extent; qualify; as, to modify a punishment."

Etymologically, as the dictionaries show, the word means "to set bounds to."

The word has been judicially defined, notably in the case of *State v. Lawrence* (7 Pac. 116; 12 Oreg. 297), a case frequently cited and whose definition is quoted in the Century Dictionary. The court there said:

What is meant by the words "may modify \* \* \* grand juries?" In a general sense, to modify means to change or vary—to qualify or reduce; and unless there is something in the context, or special usage, the words are to be taken in their plain, ordinary, and popular sense. A power given to modify or abolish implies the existence of the subject-matter to be modified or abolished. When exercised to modify, it does not destroy identity, but effects some change or qualification in form or qualities, power or duties, purposes or objects, of the subject-matter to be modified, without

touching the mode of creation. The word implies no power to create or to bring into existence, but only the power to change or vary in some particular an already created or legally existing thing.

It is true that there are some decisions which give to the word "modify" as used in civil statutes a meaning equivalent to "change"; but the weight of authority is against it, as pointed out in *Louisiana Railroad Co. v. Crossman's Heirs* (35 Southern, 784, 785; 111 Louisiana, 611). There a corporate charter empowered the district court to modify the report of commissioners to appraise property, and it was held that this did not give the court authority to increase the amount found by the commissioner. The Supreme Court said:

The views of the courts vary in these (the common-law) States. The weight of the decisions, however, does not sustain the view that it is the intention, in using this word, to enlarge or increase an amount allowed instead of, as expressed in the statute here, "to modify." See word "modify," 20 American and English Encyclopedia of Law, second edition, page 836.

In opinions containing this word the courts have not used it in the sense of completely setting aside the thing to be modified.

The lexicographers define it in the sense of limiting or reducing the thing to be modified in extent or degree.

Although there are some decisions which give to the word, when used in a remedial or civil statute, the meaning of change, vary, substitute, yet I am unable to find a single penal statute in which the word is so interpreted. Indeed it is clear that under the canons of construction a penal statute containing a power to modify a penalty could not be so construed in opposition to the lexicographers and against the plain meaning and common usage of the word, against the rights and interests of the accused.

The word, I think, takes its meaning from its setting, from its association with other words, "to modify, vacate, or set aside."

And of course the rule of *ejusdem generis* is clearly applicable and requires the conclusion that the word "modify" is of the same general meaning as the word "vacate," or the clause "set aside;" but you do not have to rely upon this familiar rule of construction to reach the conclusion, because the bill as drawn does not leave the use of the word "modify" open to such construction so long as the clause "to modify, vacate, or set aside any sentence, in whole or in part" is associated with the further clause "to direct the execution of such part only of any sentence as has not been vacated or set aside."

This subcommittee, as well as the full committee, has for a majority of its personnel lawyers. In view of the fact that it has been publicly charged that we submitted a bill which would bear this construction that Gen. Ansell charges, I ask, as a favor, that this committee make an affirmative finding upon the question whether the bill is even susceptible of the construction that has been given.

It has been charged that my interest in this bill was not such as to produce subsequent effort to secure the enactment of this legislation.

I spoke in my testimony at the last hearing, I think—if not in my first hearing—of the fact that we were all convinced of the necessity of appellate power, and that we got an appellate review under General Order No. 7 as quickly as possible, and transmitted this legislation as quickly as possible in order to get the action of Congress upon it. Now, it is stated that we abandoned that legislation after

we submitted it, and made no effort to urge upon Congress its adoption. I offer in disproof of that statement the following:

(1) I appeared before the House Military Committee on February 5, 1918, and argued as strongly as I could for the enactment of this legislation. About this time I was made legislative liaison officer between the department and the House Military Committee to endeavor, if possible, to expedite the enactment of the necessary war legislation which had been asked of Congress. It must be within the knowledge of the members of that committee that I frequently appeared before the committee urging legislation.

As proof of the unusual efforts that I was making at that time to get something done, I prepared what had not been, I believe, prepared before in the history of the committees, a calendar which would show the progress of enactment of all the war legislation pending before the two committees. There was a House section of that calendar and a Senate section of that calendar. I did that in order that members of the committees to whom I talked could see instantly the status of any particular bill.

The two committees were pleased with the efforts made to advance legislation, and had this calendar which I now place before you printed, and thereafter it constituted the calendar to mark the progress of the bills through the two Houses.

This bill we are discussing was on that calendar and was called to the attention of the committees. The Senate committee never chose to hold a hearing upon it. The House committee did hold a hearing upon it at which I testified, and it was not reported favorably. I do not think they took any action upon it at all.

Meantime General Order No. 7 was working to secure this appellate review. It was reasonably effective to do nearly everything, perhaps, that could have been done under the bill with reference to death, dismissal, and dishonorable discharge cases, and I suppose that the view prevailed that it was no longer as urgent as some other of the war legislation that was taxing the time of Congress. I want to get that thoroughly impressed upon the committee that there was no neglect upon my part, and there never was any foundation for saying that I launched this in bad faith; that I had no confidence in it, and that I abandoned it before Congress.

Senator WARREN. General, Senator Lenroot has to go on the floor and I have to report now for a conference. [Turning to Senator Lenroot:] Are you going to be detained on the floor the balance of the day?

Senator LENROOT. Until Senator Cummins comes back.

Senator WARREN. I think we shall probably have to discontinue now. Shall we go on to-morrow?

(After further informal discussion the subcommittee adjourned until to-morrow, Wednesday, October 29, 1919, at 10 o'clock a. m.)